

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128
DA 97-2214

REPLY COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL ON
REQUESTS FOR WAIVERS OF THE ANI DIGITS REQUIREMENT

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The American Public Communications Council ("APCC") hereby replies to comments filed in response to the Commission's Public Notice, DA 97-2214, released October 20, 1997, on the requests of the United States Telephone Association, the LEC ANI Coalition, and TDS Communications Corporation for waivers of the Payphone Orders¹ payphone-specific coding digits requirement for local exchange carriers ("LECs"), and AT&T's request, referenced in the Public Notice, for a temporary waiver of the requirement to pay per-call compensation.

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20,541 (1996) ("Payphone Order"); Order on Reconsideration, 11 FCC Rcd 21,233 (1996) ("Payphone Recon."); Second Report and Order, CC Docket No. 96-128, FCC 97-371 (rel. Oct. 9, 1997) ("Second Payphone Order") (together the "Payphone Orders").

**I. LEC NON-COMPLIANCE CANNOT EXCUSE IXCS
FROM THEIR OBLIGATIONS TO COMPENSATE
INDEPENDENT PSPS**

Some interexchange carriers ("IXCs") contend that, if LECs cannot provide unique coding digits, then IXCs should be excused from their compensation obligations and payphone service providers ("PSPs") should be required to seek their compensation from the LECs. Comptel at 5-6; Worldcom at 11-12.² While APCC agrees that PSPs should have recourse against LECs for damages -- including any uncollectible compensation -- in the event that LECs violate the Commission's coding digit requirements, the Commission should not excuse IXCs from their compensation obligations. Section 276 expressly required that the Commission establish a plan to ensure compensation of PSPs for each and every call, and that this compensation plan be in place by November 6, 1996. As a result of a combination of IXC resistance and LEC non-compliance, a fully functioning compensation plan still has not been implemented, a full year after the Congressional deadline. Further, as explained in APCC's comments (at 3), IXCs should have begun paying payphone compensation to independent PSPs, not one year ago, but *more than five years ago*. The fact that LECs have failed to fulfill their call tracking obligations should in no way excuse IXCs from paying compensation to independent PSPs. It may be necessary for IXCs to pay compensation on a flat-rate basis for a period of time, but there can be no dispute that IXCs must pay the compensation, in one form or another, at the prescribed rate.

² A number of IXCs recognize that, even though LECs may have violated the Payphone Orders, IXCs still have an obligation to compensate at least independent PSPs. AT&T at 4; Frontier at 7; Sprint at 4-5.

From the PSPs' perspective, moreover, allowing PSPs to seek damages from the LECs is not an adequate substitute for timely payment by IXC of their compensation obligations. Any recourse against LECs would be likely to result in litigation and associated delays. Nevertheless, since the record of this proceeding provides ample reason to fear that there will be numerous cases where LECs fail to satisfy their ANI transmission obligations, the FCC should specifically rule that PSPs are entitled to recourse against LECs that fail to transmit ANI, as an alternative to (not a substitute for) collection of flat-rate or reasonably estimated compensation from the IXC. Further, since LECs can be expected to assert that their tariffs effectively disclaim any liability for failure to provide ANI digits, the FCC should make clear that PSPs have a right to such recourse notwithstanding any liability-limiting provisions of LECs' interstate or intrastate tariffs.

**II. COMPENSATION FOR THE WAIVER PERIOD
SHOULD BE PAID ON A MONTHLY BASIS**

As the RBOC Coalition notes, there is no good reason why compensation during the Waiver Period cannot be paid on a monthly basis. RBOC Coalition Comments at 5. See also APCC Comments at 25-26. Therefore, monthly payments should be required. Furthermore, APCC agrees with the RBOC/GTE/SNET Payphone Coalition that IXCs should be required to promptly pay all interim compensation, with interest, to eligible payphone providers. RBOC Coalition at 5.³

³ Of course, LEC eligibility is subject to the conditions imposed by the Commission to ensure compliance with Payphone Order safeguards (Payphone Recon., ¶ 131), as well as any further conditions imposed by the Commission.

III. LECS SHOULD BE REQUIRED TO NOTIFY PSPS OF FLEX ANI DEPLOYMENTS AND PERMIT TESTING OF FLEX ANI TRANSMISSION

In light of the delays and problems in LEC implementation of the ANI digit requirement, it is critical for PSPs to be notified well in advance when and where Flex ANI (or any other required ANI digit service) is deployed, so that PSPs can take whatever steps are necessary to bill for per-call compensation. Therefore, LECs should not only be required to notify carriers regarding existing Flex ANI capabilities and deployment schedules, but should also be required to notify PSPs. Notifications should enable PSPs to determine precisely which of their lines are subject to per-call compensation, and notifications as to new deployment should be well in advance of deployment.

In addition, PSPs must be able to test their lines to ensure that, where Flex ANI is supposed to have been activated, it actually has been activated on particular lines. LECs and IXC's should be required to provide testing procedures for PSPs to follow to ensure that they will not be deprived of compensation due to "dropped" calls (RBOC Coalition Comments at 6) unanticipated technological problems (Southwestern Bell Comments at 3-6), or other "glitches" that are likely to result from widespread deployment of this apparently relatively untried technology.

The RBOC Coalition contends that LECs should not be required to deploy Flex ANI without a specific request from an IXC. RBOC Coalition at 6, n.2. One issue not addressed by the other parties is whether PSPs also will be required to take specific steps, e.g., subscribing to a service, before Flex ANI is activated for their lines. Given all the

other coordination that appears to be necessary, APCC believes PSPs should not be required to subscribe, but should only be notified, before Flex ANI is activated. If PSPs must subscribe to an additional screening service (beyond those to which they already subscribe) in order to have Flex ANI transmitted from their lines, there will be additional danger of miscommunication, missed orders, dropped balls, etc. causing PSPs to lose compensation. Any PSP that is currently subscribed to a payphone line service (i.e., COCOT, PAL, et.) and a call screening service should automatically have Flex ANI activated for their lines. However, those PSPs that do not subscribe to a payphone line, either because it is not offered by the LEC or because payphone lines are not suitable for an otherwise legal application (such as concentration behind a T-1 line) the PSP should be able to obtain Flex ANI by subscribing to a Flex ANI screening service.

IV. INDEFINITE WAIVERS SHOULD BE LIMITED TO NON-EQUAL ACCESS AREAS

Parties that addressed the issue did not oppose the grant of an indefinite waiver excusing LECs from transmitting unique payphone coding digits from non-equal access switches. However, some parties claim that flat-rate compensation should be paid on a different basis for non-equal access areas. MCI alleges, without evidence, that dial-around calling volumes are lower in non-equal access areas. MCI at 3-4. Sprint demands that calling volumes should be established based on a statistically valid sample of payphones in non-equal access areas. Sprint at 3.

These parties have provided no sound reason for treating non-equal access areas differently from other lines that are not yet capable of supporting per-call compensation. A

party that wishes to justify the application of a lower call volume estimate to non-equal access areas should have the burden of demonstrating, through a statistically valid sample, that non-equal access areas generate fewer dial-around calls than equal access areas.

Southwestern Bell, Pacific Bell and Nevada Bell ("Southwestern Bell") have filed comments that seek to supplement the pending waiver petitions by requesting indefinite waivers for several additional categories of calls. Although Southwestern Bell seeks these additional waivers for its own companies alone, there is nothing in the requests to indicate that the circumstances alleged to justify the additional waivers are unique to Southwestern Bell.

The information provided by Southwestern Bell gives no clear indication of the scope of payphones and calls that would be subject to the waivers, other than vague claims that a "very small percentage" of calls or lines are affected. Further, a number of the waiver requests raise troubling unanswered questions. For example, in Request #1, Southwestern Bell claims that some of its switches cannot pass the original Flex ANI digits intact to a carrier on "0- transfer" and misrouted calls. According to Southwestern Bell, it can select one digit pair that will be transferred intact, but all the rest must be replaced by "00," which denotes an unrestricted line. Southwestern Bell does not disclose how it intends to address the compensation and fraud issues that result. For example, if an indefinite waiver is granted, will Southwestern Bell go ahead and implement Flex ANI on the affected lines, so that non-0- transfer payphone calls can be transmitted with payphone-specific ANI? If so, then how does Southwestern Bell intend to prevent fraudulent calls that result when 0-

payphone calls are incorrectly transferred to carriers with a "00" digit indicating "unrestricted line"? If Southwestern Bell does not implement Flex ANI from the affected lines, then *all* dial-around calls from the affected lines are likely to go untracked and uncompensated.

Similarly, each of the other requested waivers raises numerous unanswered questions. In Request #3, Southwestern Bell indicates that the problem with 800 calls translated to POTS routing numbers affects only intraLATA calls, but fails to indicate which carriers are affected. In Request #4, there is no explanation of the types of payphone calls that use EAOSS trunk groups. These and numerous other unanswered questions loom all the larger because Southwestern Bell provides no quantitative assessment of the scope of any of its waiver requests, other than asking the Commission to take it on faith that "a very small percentage" of calls are affected. And while Southwestern Bell claims that "ANI lists, and where needed other available call information, can continue to be used to allow per call compensation, "there is no explanation of how this alternative would work. This omission is particularly glaring since most of the waiver requests involve situations where no meaningful ANI digits at all -- not even "07"-- would be passed.

Before the Commission can even consider these waivers, Southwestern Bell -- and any LEC subsequently requesting a "me-too" waiver -- must be required to provide full details on the number of calls and payphone lines affected, as well as the extent to which the problems are concentrated in particular areas.⁴ Southwestern Bell also must be

⁴ A problem that affects "a very small percentage" of nationwide call volumes may affect a very large percentage of an individual payphone provider's compensation,
(Footnote continued)

required to explain in more detail the nature of each problem and the reasons why it is not feasible to address it by the end of the Waiver Period. Unless a compelling justification is provided for each waiver request, the waivers must be denied. Even if they are granted, Southwestern Bell should be required to fully recompense the affected payphone providers for any estimated compensation that is not collected, on a flat-rate basis or otherwise, as a result of failure to transmit specific ANI digits.

V. TO PREVENT GAMING OF THE SYSTEM, EACH PAYPHONE LINE SHOULD BE SUBJECT TO EITHER FLAT-RATE OR PER-CALL COMPENSATION FOR ALL IXCS

The comments of a number of parties appear to assume that IXC's will be able to choose whether to pay per-call compensation or flat-rate compensation, for any given payphone or group of payphones, during the Waiver Period. As APCC explained in its comments, allowing IXC's to pick and choose where to pay per-call compensation will encourage "gaming the system" to the detriment of fair compensation, and should not be allowed. APCC at 28-29. If the Commission decides to begin per-call compensation during the Waiver Period for payphone lines that can already support Flex ANI, then it should require all IXC's to pay per-call compensation at such payphones as soon as Flex ANI is activated for such payphones. Under this approach, carriers that have alternative means of paying per-call compensation could decline Flex ANI, but should still begin paying per-call compensation as soon as Flex ANI is activated.

(Footnote continued)

particularly if the affected switches happen to serve a large portion of that provider's payphone route.

An alternative, and administratively simpler, approach would be to simply mandate flat-rate compensation for all "dumb line" payphones, regardless of whether they can currently support Flex ANI during the Waiver Period.

VI. CALL VOLUME ESTIMATES MUST BE ADEQUATELY SUPPORTED

The RBOC Coalition concurs with APCC that the Commission should consider limiting the scope of any IXC waiver to subscriber 800 calls. Thus, the Commission could institute a temporary two-tiered system in which access code calls are compensated on a per-call basis, while subscriber 800 calls are compensated on a flat-rate basis.

However, the RBOC Coalition's estimate of the average volume of subscriber 800 calls at LEC payphones that would be subject to flat-rate compensation is not credible. The RBOC Coalition submits information purporting to justify a finding that the number of subscriber 800 calls is substantially higher at LECs' "smart" payphones using "dumb" lines (which would be subject to flat-rate compensation), than at LECs' "dumb" payphones using "smart" lines (which would be subject to per-call compensation). Contrary to the Coalition's suggestion that its estimate is similar to APCC's, the RBOC Coalition's estimate of 151 subscriber 800 calls per payphone per month is approximately 40% higher than the 108 subscriber 800 calls per payphone per month estimated by APCC. The RBOC data is based on an unspecified number of payphones of a single company during a single month. While complete scientific validity is not required, this is a wholly inadequate sample. The record is far too scant to support the application of a higher calling volume level to smart LEC payphones than to independent payphones.

CONCLUSION

The Commission's decisions on these issues must be made as soon as possible to provide regulatory certainty, ensure timely payment of fair compensation, and promote the earliest implementation of a fully competitive payphone regime.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 1997, I caused a copy of the foregoing Reply Comments of the American Public Communications Council on Requests for Waivers of the ANI Digits Requirement to be sent by first class mail, postage prepaid or by hand delivery, to:

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